IN THE SUPRERIOR COURT OF THE UNITED STATES

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MARIE BRESSLER

Defendnt and Appellant,

vs.

U.S.C.A. FOR THE NINTH CIRCUIT

APPELLATE COURT DIST. DIVISION FOUR STATE OF CALIFORNIA)

80-5018

HONORABLE SAM HALL, M. ROTHENBERG, & ROBERT COONEY, DEPT. #1, # 7 & # 8, SUPERIOR COURT, CONTRA COSTA COUNTY)

MARTINEZ, CALIFORNIA

CASE A-1041

Respondents,)

JURISDICTIONAL STATEMENT

H. & M. BELLOC, A. TAUBMAN, A. RUBLOF & CHARLES ALLEN, JR., individuals;)

WELLS FARGO BANK, Trustee a Corp. SUNVALLEY SHOPPING CENTER, a partnership; BAYSHORE PROPERTIES, INC., a partnership;)

Plaintiffs and Appellees.)

)

APPEAL FROM THE UNITED STATES COURT OF APPEAL FOR THE 9TH CIRCUIT

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MARIE BRESSLER

Defendant and Appellant,

vs.

U.S.C.A. FOR THE NINTH CIRCUIT

APPELLATE COURT DIST. DIVISION FOUR, STATE OF CALIFORNIA

HONORABLE SAM HALL, M. ROTHENBERG, & ROBERT COONEY, DEPT.#1, # 7, & # 8, SUPERIOR COURT, CONTRA COSTA COUNTY MARTINEZ, CALIFORNIA.

Respondents,

H. & M. BELLOC, A. TAUBMAN, A. RUBLOF, CHARLES ALLEN, JR., individuals; WELLS FARGO BANK, Trustee, a Corporation; SUNVALLEY SHOPPING CENTER, a partnership; BAYSHORE PROPERTIES, INC., a partnership;

Plaintiffs and Appellees.

CASE# A-1041

JURISDICTIONAL STATEMENT TO SUPPORT APPELLANT'S APPEAL U.S.C. § 1254(2)

ON APPEAL FROM THE UNITED STATES COURT OF APPEAL FOR THE 9TH CIR.

MARIE BRESSLER, the appellant, appeals from the orders of the U.S.C.A. Judges, dated May 26'78, Oct. 9'79,& March 10'80. Appellant respectfully requests this Court to review her appeal to reverse the judgment & order the lower Ct. to dismiss the 1st & 2nd complaints & to enter default judgment against appellees under lease contract PARAGRAPH 17, of the tenant lease agreement, Court Rules and Orders. (Fed. Rules, C.P. Rule 8(c)(d), 9(b), 12, 37(b), 55(b)(1), 28, U.S.C.A.

ORDERS BELOW

The U.S.C.A. Judges' subsequent order (denying appellant's writs, & Motions to dismiss 1st & 2nd "willful malicious prosecutions", & to enter "default judgment" against appellees, (vol.1pp. 246-269) are attached as Appendix, "A","B", & "C".

The findings of fact & conclusion of law (Rule 52) are not entered. Order for "final judgment" refused to be signed (vol.2 pp.36-44) by the U.S.C.A. judges, certified by the Ct.Clerk,Deane.

The orders of the U.S.C.A. Judges, for the 9th Cir., revoking the statute, decisions contrary to the issue presented is against the weight & evidence, is, at most error, within jurisdiction is a "QUESTION OF LAW"

Records, (3 vols. received by the U.S,C. May 29'80) Vol.I p.1 to pp. 368, Vol.II p.1 to 116, & Vol.III p.1 to pp. 264, certified by the U.S.C.A. Ct. Clerk, R. Deane, (Rule 12) that the record on appeal is a full, true & correct copy in cases # 78-15-68 & # 79-7291 & # 80-7089, BRESSLER, appellant,vs. H.&M. BELLOC, et al.,..Records abundantly support findings of "willful default" against appellees under lease contract PARAGRAPH 17.

JURISDICTION

1. The jurisdiction of this Court is invoked under 28,U.S.C. § 1254(2), which provides for review by this Court, "by appeal by a party relying on a State statute held by a Court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the U.S., but such appeal shall preclude, & the review by writ of certiorari at the instance of such appellant, & the review on appeal shall be restricted to the Federal questions presented."

Existence of "willful malice"sufficently strong to warrant BAYSHORE PROPERTIES, INC., & WELLS FARGO BANK, to assume the truth of the charge (Penal Code § 7,sube.4; (vol.1p.226)

> Malice does not necessarily infer the presence of anger or vindictiveness. It is sufficient if it appears that the former suit, was commenced in bad faith to annoy, or wrong the adverse party. Griswold v. Griswold 143 Cal.617,(77 P.620) See Dunn v. Koehring Co.546 F.2d 1193(1977)

Ist. & 2nd. "unlawful detainer actions" filed against appellant are "FRAUD". Courts are w/out jurisdiction regarding appellees complaint against defendant dated Jan. 15'71, (based on PARAGRAPH 17 of the tenant lease agreement) and July 6'78 under fraudulent transaction.

> It is said in Corpus Juris, vol.42 p.558; "An order made by a Court of judge wholly w/out jurisdiction is void and of no force or effect. A void order remains w/out effect and completely as if never entered.
>
> Lack of jurisdiction in its most fundamental or strict sense entire absence of power to hear or determine the case, & absence of authority over the subject matter of the parties. (See generally, 14 Am. Jur. 363, Sec. 160) See Abeillera v. Dist. Ct. of Appeal (1941) 17 C.2d, stated at 288; "dismissal of an action, as much broader meaning is recognized." (vol.1Ct.p.258)

Numerous cases sustain jurisdiction. In Thomson v. Wooster 1885, 5 S.Ct. 788, 114 U.S. 104, 29 L.Ed. 105, it was held that an appeal lies to this Court from an order of the Court of appeal upholding the validity of a state statute as against the contention that it contravenes the federal constitution. See Pope v. United States 323 U.S. 1,12 65 S.Ct. 16,89 L.Ed. 3 (1944); (for failure to prosecute see Link v. Wabash Railroad Co. 370 US 626, 8 L ed 734, 82 S Ct. 1386; United States ex rel. Bailey v. U.S.C.O. of Provost Marshal, U.S. Army, 496 F.2d 324,326 (1 Cir. 1974) U.S. v. Tremont, 438 F.2d 1202(1Cir.1971) dismissal affirmed. Also see Norman v. Young v. Young, 432 F.2d 470(10th Cir.1970) default judgment w/sanction affirmed.

2. Notice of appeal under # 80-7089, was filed March 19'80, from the U.S.C.A.,(Rule 10) pursuant to 28 U.S.C. § 1254(2). Appellees' counsel & parties had been served (Rule 28), First appeal under # 79-7291, was refused to be filed Oct. 15'79 by the U.S.C. Ct. Clerk, Deane, instructed by the Court.(vol.1p.2)

3. Application for extention for docketing appeal under Rule 13(1) was granted by judge Wm. Rehnquist, Associate Justice of the Supreme Ct. of the U.S., dated May 30'80, for July 7'80, received June 7'80. Due to her "heart condition" caused by this litigation, appellant mailed "applications" (for filing brief in excess of the page limit(30) Rule 43, & extention for Aug.7'80) June 13'80, addressed to judge Rehnquist because of the "new rules" effective June 30'80. Requested denied.

Appellant is requesting the Court to appoint a counsel on her behalf, because she having trouble retaining one, which is very unusual, because, "gross fraud" liabilities, penalties w/sanctions is firmly established against the appellees, for almost 9 yrs., pursued very deligently by appellant costing her well over $ 11,000 by preventing her from obtaining justice. (vol.2Ct.p.26)

4. Motion for leave to file unprinted form was received by the U.S.C. May 29'80. It is a matter of record that request "unprinted brief" was sought & granted by judges, DRAPER,(Div. three) and GOODWIN, U.S.C.A. for the Ninth Circuit. The $ 200.00 fee enclosed to the "jurisdictional statement".

5. U.S.C.A. Cts. Clerk,Deane, advised appellant to send "jurisdictional statement" directly to U.S.C.. Jurisdictional Statement is "hand delivered" by the "Express, overnight" July 2,1980.

QUESTION PRESENTED

The U.S.C.A.9th Cir. Judges, erred, in revoking the statute, 18 §§ 1621, § 401, 18 §§ 241, the well established pleaded allegation based on "gross fraud" w/11 counts of "cross-claim", willfully violated & defaulted by Bayshore & their counsels, allowing Wells Fargo Bank, to file a 2nd "unlawful detainer action" of the same contract under fraudulent transaction w/out final judgment of the first action, to close appellant's store w/out a trial by using the writ of "execution" as a form of "extortion" at the amount of $ 7,980.79 (vol.1p.118) is constitutionally impermissable based upon the First Amendment as being violative of appellant's right requirement,(under lease contract PARAGRAPH 17), the 5th and the 14th Amendment "due process" requirement.

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*Citing FREEMAN & JUDGMENTS 4th.ed, Sec.34; "no judgment" will be regarded as final unless all necessary "ISSUES" of "LAW" &"FACT" have determined & the case completely disposed of; As a general rule recognized by the Cts. of the U.S. is, that "no judgment will be regarded as final within the meaning of the statute in reference to appeals unless all issues of law & fact necessary to be determined.(vol.1Ct.p.254)

STATEMENT OF FACTS

This is an appeal from the U.S.C.A. (to recover treble damages under Anti Trust Law of the U.S. §§ 15 USC §§ 15) to dismiss 1st & 2nd "willful malicious prosecutions" filed against appellant on the ground of gross laches, fraud, misrepresentation of the lease, perjury, frivolous appeal, violations of Rule 18(PGandE's tarrif rate) Crim.Contempt of Ct.,willful conspiracy, willfuly violated by appellees(refused to be entered as evidence by the lower Ct.) & defaulted by appellees counsels after it had been tried, refused to be dismissed by the U.S.C.A., 9th Cir. judges, (S.Ct. judges,vol.1Ct.pp.368-404) ELY & GOODWIN, (under motion to dismiss & to enter default judgment, (vol.1Ct.pp.249-275) is extremely prejudicial & abuse of judicial power by revoking the statute.

> It has long been held that a motion to dismiss under Rule 12 will be sustained where laches can be determined w/out the necessity for further factual inquiry. LOMAX v. U.S. 155 Supp. 354 (E.D.pa 1957) As stated in Link v. Wabash R. Co. 370 U.S. 626,633, 82 S.Ct. 1386, 8 L.Ed 2d 734, 739 (1962)dismissal generally has been permitted "only in the face of clear record of delay or contumacious conduct by the plaintiffs. See Ramsay v. Bailey 531 F.2d 706(1976) dismissed w/prejudice Rule 41(b) for failure to prosecute. See Norman v. Young 422F.2d470(10th Cir.1970) for "willful default under Court Orders.

BAYSHORE, suing appellant the amount of $2,041.00 (vol.1p. 167) # 122370, & WELLS FARGO BANK, # 188759, filed 2nd "unlawful detainer" Nov.6'78,(the same contract after the expiration of the lease w/out final judgment of the 1st action) followed by a writ of "execution" as a form of extortion"(vol.1p.117) at the amount of $7,980.79(vol.1p.118). Appellant believes the practice of closing her store full of merchandise w/out a trial is unfair, deceiptive, unreasonable, unduly prejudicial, discriminatory & against the Constitution. U.S.C.A. Judges are fully aware that appellees failed to establish, existence of any genuine issue as to any material fact which would support existence of claim against appellant. (based on general pleadings of gross fraud firmly established fraud liabilities against appellees,supported w/records oraly argued & regardued undisputed) See Latta v. Western Inv.Co.,9Cir. 173 F.2d 99;(vol.1Ct.p.287) -5-

Under Fed. statute it is mandatory & duty of the Ct. to dismiss & enter default judgment against appellees by their malicious prosecutions, forcible entry & enforcible unlawful detainer act filed against appellant, when affirmative defenses of malice, gross fraud w/11 counts willfuly defaulted firmly established. Cross-claim (# 78-1568-#79-7291 &# 80-7089) remained un-answered & when undisputed material facts is revealed upon which moving party is entitled to judgment as a matter of law. Fed. Rules, C. P. Rule, 8(c)(d),9(b) 12, 37(b), 55(b)(1),28 U.S.C.A.,Vol.2Ct.p.52)

On April 19'78, appellant filed "Extraordinary Relief under the All Writs Act Title 28 §§ 1651(a)"(vol.1Ct.pp.11-60)w/attached appendix, based on Extrinsic Gross fraud CC §§ 3333 w/11 counts against appellees, stating trial Ct.'s gross errors & Bayshore's gross violations, willfuly violated, tried & proven beyond a reasonable doubt in appellant's presentation of facts in the presence of the jury July'73,# 122370,(D.C.A.Div. three,Nov.19'75,# 35845) w/out the presence of the appellees, undisputed by Meyers & McCabe)their counsels,JACOB, SILLS & COBLENTZ' associates, are the following facts;

I: LEASE AGREEMENT BETWEEN LANDLORD & APPELLANT

(a) On June 15'68, appellant leased a certain premises at Sun-Valley Center,(owned by BAYSHORE) Concord, Cal.,known as "MARIE'S ORIGINALS", from Crocker Citizen Nt'l Bank. On March 2'71 Crocker Citizen rendered its resignation of Trusteeship;, after Bayshored served appellant & other 25 tenants three day notices.(vol.1Ct.p.171)"TO PAY OR QUIT THE PREMISES WITHIN THREE DAYS" based on PARAGRAPH 17 of the tenant lease agreement.(vol.1p.167)

Under motion for Admission:for damages, expenses & equity relief based on extrinsic fraud,(set aside during jury trial)was heard after jury trial before Respondent Cooney w/out the presence of appellees & their counsels of record.(vol.3R.Ts.p.153 "NO APPEARANCE". No opposition was filed against the allegations stated in this appeal, or opposition to the amount requested in the complaint.(vol.1Ct.p.18-p.23)

(b) The rights & liabilities now in connection w/its business dealing w/Bayshore acquired by WELLS FARGO BANK, as Trustee, owned by BARTNETT BELLOC, (deceased) fiduciary successor are HILARY & MARTIN BELLOC, (landlord) ALFRED TAUBMAN, ARTHUR RUBLOF, & CHARLES ALLEN, Jr., (gen. partnership) referred to as "BAYSHORE PROPERTIES, INC."

(c) The contract was signed after Mr. Zellick, (Bayshore's Gen. Mgr.) confirmed in writing (vol.3p.83-84) & on the witness stand, the monthly "RENT", $ 550.00 & "UTILITIES" $ 60.80,which is a total of $ 610.80.* The letter goes on to state that the electrical charge would not exceed the furnishing of electricity by PGandE could PGandE have serviced us direct, (vol.pp.200-201), The rent was totally different when we received the monthly invoice excluding the yearly overcharge (vol.3p,181)**

(d) The said foregoing charges stated above were & are illegal unlawful & in violation of the Const. of the State of Cal. Bayshore & each of them does not possess nor did they posses at any time, herein mentioned, individually or collectively & Franchise permit charter Certificates or Public conveyance & necessity, or any other form of authorization to sell, or resell, electric energy to plaintiffs, or anyone elese, under a procedure whereby the purchasers would be rendered a separate billing of any kind at any time for the amount of electric energy which consumed in the operation of their respective places of business. (vol.1 Ct.pp.221)

(e) The lease contained a standard PARAGRAPH 17 page 5 of the lease, designated "UTILITIES", which pertained to electricity charges.

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* $ 610.80 monthly is approx. $ 71.000. Appellant paid Bayshore $ 95,000, had over paid Bayshore the amount of $ 24,000. Had spent $ 25,000 to build & open"MARIE'S ORIGINALS", & had spent well oever $ 111,000 caused by their "willful malicious prosecutions" (to protect appellant's property rights, had neglect 10 yrs. from the time she opened her store up to the time they closed, (vol.1Ct.p.85)

(e) In May 19'69 (11 months after appellant opened the store an actual controversy arose & now exists between tenant & landlord relative to their respective rights & duties under the terms of lease PARAGRAPH 17, which provides for rendering of a separate billing for electricity used by tenant. Bayshore made a determination based an arbitrary year which did not conform to any of the tenant lease hold yrs., prepared by D.Yoshpe.(vol.3p.126). The additional $ 801.98 yearly electrical overcharge was greater than the original negotiations $ 729.60.(vol.1p.202)

II. BAYSHORE PROPERTIES,INC. VIOLATES RULE 18*

(a) The first count appellant alleges; "That the charge in this action is "FRAUD". Bayshore Properties,Inc., & each of them under said billing procedure as set forth in the lessee PARAGRAPH 17.

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*As stated in the presence of the jury. "The shops of SunValley Center are not separately metered for electricity, (a) we are being billed for rent, (b) separate amount for utilities, (c) separate amount for public area maintenance, & the sum total is paid monthly & at the end of the year, we are being billed again, additional charge for P.A.M. & electricity which is clearly in violation of RULE 18(PGandE's tarrif rate) PARAGRAPH 17 of the tenant lease agreement. (See Request for Admission, vol.1 pp.126)

One of the primary purpose of RULE 18 is to prohibit non-domestic submetering & resale of electrical energy.(CPUC Dec. No.63562,dated Apr.17'62) See e.g. ReClevland Electric Illum Co. 54 PUR 3d 225 (1966) (vol.1Ct.p.224)

A landlord does not have vested right to submeter. These practices of resale & redistribution are not in the public interest because they prevent the consuming public from getting as low rates & as good service as can profitably be establised by the Utility Co. That these practices misrepresent the true number of troal customer, & the quotient per customer component in a 2 part rate will be unduly high; These practices restrict normal general voluntary rate reduction by the Public Utility. These practices are undesirable from the standpoint of the tenant, because inter alia, the tenant is a captive customer w/no practical redress for any service or rate grievance; That ordinarily tenant does not receive from the landlord & in many instances has already paid or is already paying for it as an inseparable part of the rent package for in setting the rent charge, the landlord ordinarily charges all the traffic will bear. The PUC also contends that in the States where the practices of resale & redistribution had gron considerably it was found necessary, in some instances to prohibit such practices. (vol.1 Ct.pp.132-133)

I offered to pay Bayshore what was rightfuly due them,but Bayshore returned the check & threatened to file an "unlawful detainer against me. I wasn't about to quit the premises for it is the only livelihood for me and my family so I fought back when they refused to settle for the amount rightfully due them.

(Ct.p.133)

III. FRAUD

(a) McNeely, testified in the presence of the jury that Bayshore has sold 2,240,287 Kwhrs. in excess of purchases, (b) Bayshore has marked up utilities by over 80%. This results in excess cost to tenants. (c) Bayshore has used an inflated cost factor in its report of adjusted operating expense, rather than the actual costs.(See complete report, vol.3pp.85-90)

> Allegation of fraud need not be proved precisely as alleged the substance & material parts being all that need be proved nor is it necessary that every item of alaged fraud can be had a proof of one. BAILEY V. YOSEMITE PORTLAND 135 CA, III 28 P2d 65 (vol.1Ct.p.224)

(b) Writ of review filed by BAYSHORE's counsel was denied by chief justice D. Wright, Oct.12'72. Attached as Appendix "D"

All circumstances as disclosed by the evidence, indicated that the finding stated the fact and, indeed, sufficiently suport to enter the written findings of fact & conclusion of law(Rule 52) against Bayshore, & each of them are guilty of fraud, violation of Rule 18 PARAGRAPH 17,declared by PUC March 14'72 (vol.1pp.192-193 part of PUC brief & PGandE's Rules)

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* Appellant further stated in the presence of the jury, that Bayshore has overcharged for electrical power to the extend that they consistantly & constantly sold Kwhrs. in excess of the amounts purchased from PGandE. This is definitely a fraudulent practices, & cannot in anyway be attributed to any type of mistake because this was repeated year after year, until the present time. It's a case of purely & simply obtaining revenue under false practices. Fraud included all surprises, trickery, cunning, diseembling unfair, way by which another is deceived. All deceitful practices in depriving or endeavoring to deprive another of her known right by means of some artful device or plan, contrary to the rules of common honesty are fraud. By virtue of all of this, I have spent years of my times & an insurountable amount of money to get this matter before a jury as it is today.(vol.1Ctpp. 131-132)

Tenants in SunValley Center are not treated equally. There is wide discremination in Sunvalley between large stores and small independent businesses.(vol.1Ct.p.133)

IV. BAYSHORE VIOLATES PUC CODE § 216; The 2nd count appellant alleges; That Bayshore violates PUC Code § 216, by acting as a "PUBLIC UTILITY" w/out a license. (vol.1 Ct.p.225)

The commodity is delivered by person or Corporation to Utility for delivery to Utility Customers, that person or Corporation is itself PUBLIC UTILITY under(c) of this Section PUC Code 216: CORONA CITY WATER CO. IN RE(1959) PUC 474

V. BAYSHORE VIOLATES PUC CODE § 2111

The 3rd. count appellant alleges; That Bayshore & each of them violates PUC Code § 2111 for non-compliance of Rules & Regulation of the State of Cal.(Penalties of $2,000 for ea. offense)under PARAGRAPH 17 of the tenant lease agreement.

Former § 78, Amended 1967 ch 838; enacted 1951 BASED ON: (a) Stats. 1915 ch 91 § 78 p.167 (b) Stats 1st Excess 1911 ch 14 Sec. 78 p.61 Cal.Jur .2d PUC & Serv. § 51. McKinney's Cal. Dig. Penalties et seq. Puc Serv. § 50.

THE BASIC FACTS ARE:

BAYSHORE has been & still selling electricical power un-meteres, violation of the Cal.Adm. under Authority of § 12107 of the Bus. & Prof. Code § 3177,3,5,(b) of the Cal.Adm. by issuing bills for electricity w/out showing the actual meter reading as required. Penalties as provided for in Div.5 of the State of Cal.

VI. MISREPRESENTATION OF THE LEASE: "actual fraud"

The 4th. count of complaint appellant alleges; That BAYSHORE & each of them, contract to the lease was misrepresented regarding amount of a method of electrical billing.*

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* Appellant stated in her closing argument, the complaint alleges that all said representations were false, & were made "willfuly, falsely, fraudulently, w/intent to deceive & defraud appellant & induce her writing,stating that electrical charge would not exceed the furnishing of electricity by PGandE could PGandE have serviced us direct. As stated in Jarvis v. Singleton (1933)129 Cal.App. 250 18 P2d 382) In such action, the allegation the representation were false & fraudulent, & were made for the purpose of inducing appellants to purchase said real property", was sufficient allegation to intent to deceive.(vol.1p.229) See Prosser Law of Torts § 105 at 691 "ESTOPPEL" See summary torts §§ 197, 525;

It is a matter of record Bayshore refused to produce P.A.M. w/supporting docuemts, property taxes etc.again more evidence of Bayshore reeping more unlawful excessive profits,(Respondent Coney was fully aware of) was read in the presence of the jury that I was charged $ 671.00 & $ 543.00 in the yr. 1970,for property taxes..(Tax assessor fuly reveal the actual record paid by Bayshore at the amount of $ 410.00.(See Magnaleasing Inc.v. Staten Island Mall,(1977)563 F.2d 567. The Court of Appeals held that misrepresentation as to expected tax & common area charges were actionable. Judge McMahon granted judgment for the plaintiffs,rescinding the 15 yr. lease between Magnaleasing & the Mall. He referred the question of damages to a special master, & he subsequently confirmed a damage award of $ 156,769.99 on Magnaleasing.

> As stated in Nader v. Allegheny 512 F.2d(1975)generally accepted rule was that the make of a fraudulent misrepresentation is liable to those he intends to influence. See e.g. Wollenberger v.Hoover,346 III, 511,179 N.E. 42, (1931)Rest.(2nd) of Torts,Explanatory Notes §§ 531,at 96 (Tent Draft No. 10 1964) (vol.1 Ct.pp.229-230)

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* LADIES & GENTLEMAN OF THE JURY BEFORE MAKING A DECISION YOU MUST ASK YOURSELF THIS: (vol.1 Ct.pp.133-134)

(a) Is it right for Bayshore to mislead make misrepresentation to the tenants & then kick them out from their premises knowing that they are in violation of RULE 18, under PARAGRAPH 17 of the tenant lease agreement.

(b) By law the court must protect the tenants & penalized Bayshore for their misrepresentation & malicious prosecution.

(c) Concealing evidence of fraudulent acts, concealments, or misrepresentations, designed to influence the conduct of a party to a transaction, are admissable in an action based on the alleged fraud in such transaction. When supported by sufficient evidence, it is the facts pleaded & not the theory of the case, on which appellant is to be granted.

(d) Is it right for Bayshore to shrugg off the past & just make new lease. Leases in which the tenant would have no protection whatsoever from the PUC. A new lease is not the true answer it is too late now to correct their grave mistakes with new leases The damage have been done & the violations committed. The only fair solution would be to install individual meters as suggested by Weight & Measure or apply as a Public Utility under Section PUC Code 216 prescribed by law.

(e) YOU MUST ASK YOURSELF THIS...How many people are willing to fight for their rights inspite of the difficulties & problem as I had to go through. Most people would be discourage or end up in a hospital but I believe in GOD & HUMANITY & that somewhere, somehow there is justice & I am here now seeking justice. I am not asking for symphty, but what I asked from all of you is to see that JUSTICE IS DONE...and now I am asking the chief justice of the Supreme Court of the United States to see that JUSTICE IS DONE...

IX.* FRIVOLOUS APPEAL: The 9th count appellant alleges; That Bayshore & their counsel, McCabe are charged w/willful malicious act & abuse of process w/conspiracy to defraud the 1st action under frivolous appeal (vol.3p.1) filed Oct.173 against judgment. Appellant filed cross-appeal Oct.31'73(vol.3p.1) Bayshore's appeal was dismissed Jan.11'74,# 34038, vol.3p.63) by judge Taylor, Div. Two.but were reinstated by same, upon McCabe's request, (misleading the Ct. conspired w/the Ct. Clerk, vol.3pp.65) Violations stated in this appeal, their malice intent oraly argued, undisputed by Meyers.(vol.1Ct.p.23) I further argued that counsels refused to stipulate for a "New Trial"(vol.3p.207) & for Respondent Cooney to authenicate records,(vol.Ct.p.43) because R.Ts. are reworded, added, material issues ommitted,(p.40)refused to be corrected by trial Ct.(vol.Ct.p.21)under CRC RULE 8(a). I further argued that this action is "RES ADJUDICATA", the Ct. lack jurisdiction against Bayshore's appeal(vol.1Ct.p.42)

Since D.C.A. refused to dismiss Bayshore's appeal after it was reinstated, & the Super.Ct.refused to file my motion to enter "default judgment"(vol.1Ct.p.281). I filed my appeal May 16'74, attached as Appendix "F.

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* The critical question is rather whether the situation here is one of those "highly unusual" instances which permit the imposition of sanction under Rule 38 because of"a clear showing of bad faith" (See Fluoro Elect.Corp.v.Branford Associates,C.A.2d, 1973,489 F.2d 320,326. Sec. 1912 & 1927 Title 28 of the U.S. Code & Rule 38 of the Federal Rules of Appellate Proc. provide that the Ct. may award damages & double costs to the defendant in cases of frivolous appeal. (purposely to block defendant from obtaining justice) Rule 38 was designed to penalize litigants for just such tactics as these & to compensate those who have been put to the expense of answering such wholly frivolous appeal. NLRB. v. SMITH & WESSON, 424 F.2d 1072(1st Cir. 1970). Rule of appellate procedure authorizing Ct. of appeals to award damages for delay double costs upon finding appeal frivolous, is not premised on a showing of delay in prosecuting on appeal,but rather the determination is one of doing justice between the parties of penalizing a party for unnecessarily wasting the tine & resources of the Ct. Fed. Rules App.Proc.Rule 38,28 U.S.C.A. Interest(Rule 37) may add in costs of appeal.

VII. MALICIOUS PROSECUTIONS BASED ON PARAGRAPH 17

The 5th & 6th counts of complaints appellant alleges; That Bayshore, Wells Fargo Bank, McCabe & Waranof, are charged w/wilful malice, & Royan w/perjury by their malicious prosecutions against appellant under PARAGRAPH 17 of the tenant lease agreement lease agreement w/the full knowledge of the fraudulent transaction, violation of RULE 18,(PGandE's tarrif rate) under PARAGRAPH 17.

PGandE's representative(Riddle) wrote Bayshore May 20'70 (vol.pp.203) advising their violation of RULE 18 PGandE's tarrif rate, before serving us "EVICTION NOTICE", confirmed by Royan at the witness stand. He further admitted that appellant was overcharged electrical power at the amount of $ 801.98. YOSHPE, in his own admission when cross-examined by appellant stated that "YOSHPE REPORT" billing to Marie's (1426 Kwhrs. was an error) (vol.1Ct.p.27)... Royan's,(Bayshore's comtproller) affidavit in support of their eviction notices,(vol.1pp.174-180) lies regarding the separate charges, at the same times contradicting his own statement, by admitting appellant had paid additional rental computed by YOSHPE. Because of their conflicting testimonies, I introduced thier depositions in the presence of the jury.

MRS. BRESSLER:

QUOTE: "Your Honor", I just want to prove that both Royan & Yoshpe are both lying, Yoshpe, stated in his deposition, that he didn't prepare the billing, but merely does an"evaluation" & Royan's deposition firmly stated that does prorations are all made by YOSHPE. We used their figures, we make no prorations,(RTp.493lines 24-77) Yoshpe deposition, it was very clearly stated when I asked him "how many separate billings he prepared? (was read RTp.35 lines 25-28) His answer was "just for the record, I don't consider anything we have done as a billing. It is an evaluation by no means is this a billing. (See vol.1Ct.pp.27-28)

I further told the jury, "That I offered to pay Bayshore what was rightfuly due them, I tried in every way I could to settle, by hiring, Elect.Emgr.(VLMER,INC.CPA) showing the discrepancy of Bayshore's billing prepared by YOSHPE, & VOLLMER's report, March 20'70(vol.1Ct.p.27)but they refused. I offered to install a "test meter" through PGandE at my own expense solve the whole problem & this would neable me to concentrate & devote my time w/my family & place of business,but the answer was three day notice.

(b)Filing 2nd "unlawful detainer",(purposely refused to accept payment from appellant (vol.1p.116) to oust appellant from premises,(p.117) w/out the final judgment of the 1st action is willful malicious act. U.S.C.A. Judges is w/jurisdiction to award the writ and order severe sanctions against appellees & their counsels, (McCabe & Waranof) under Fed. Rule 11, where trespass alegedly commited, involves initiation or perversion of legal process, torts of misuse of process,(vol.2Ct.p.42) See Trespass § 25 Prosser Law of Torts*.

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* The rule w/reference to the tort involved is stated in Tranchina v. Arcinas, 78 Cal.App,2d 522, 525 (178 P.2d 65); "This tort is thus defined in 3 Rest. of Torts, section 682 page 464;

"One who uses legal process, whether criminal or civil, against, another to accomplish a purpose for which it is not designed is liable to the other for the pecuniary loss caused there by;

"COMMENT:

"The gravemen of the misconduct for which the liability stated in this Section is imposed is not the wrongful procurement of legal process or the wrongful initiation of criminal or civil proceedings; it is the misuse of process, no matter how properly obtained in the course of proceedings which were brough w/probable cause & for a proper purpose or even that the proceedings terminated in favor of the person instituting or initiating them, The subsequent misuse of the process, though properly obtained, constitutes the misconduct for which the liability is imposed under the rule stated in this Section.

"So in 1 Cooley on Torts, 4th edition, section 131, pages 434-435 we read; 'If process, either civil or criminal, is wilfully made use of for a purpose not justified by the law, this is abuse for which an action will lie. The action will lie although the process was lawfully issued upon a valid judgment for a just cause and is valid form. The grievance for which redress is sought arised consequences of subsequent acts the illegal & malicious abuse of the power conferred by the judgment and writ;"

The rule is similarly stated in Dean v. Kkchendorfer, 237 N.Y. 384 (143 N.E. 229,231) by Mr. Justice Pound of the Court of Appeals;

The gist of the action for abuse of process lies in the improper use of process after it is issued. To show that regularly issued process was perverted to the accomplishment of an improper purpose is enough."

The same effect are 50 C.J.612; 1 Am.Jur. 176; Prosser on Torts, § 98 p.892 et seq.

VII. PERJURY & CRIMINAL CONTEMPT OF COURT: § 401

The 7th & 8th of complaint alleges; That Bayshore, Royan & McCabe are charged of perjury & criminal contempt of Ct. by their continous refusal to comply orders of judge McBride(vol.3p.120)to produce billing invoice,etc.enforced by judge Masterson July 10'72 (3p.122)ignored by appellees, agent, and counsels, Meyers & McCabe.

To prove the excessive charged for utilities, P.A.M.,property taxes,etc. I obtained four orders, by judges, McBride & Greg "ORDER TO SHOW CAUSE"(CCP §§ 1212-1211) for A.Taubman, A. Rublof, & C. Allen,Jr. to appear in person in Law & Motion(vol.pp.182-191)but they refused w/out filing any explanation as to why they failed to appear on said orders.(vol.1Ct.pp.30-35)

> As stated in Security Comm.v. Research Corp.571 P.2d 585 (1975) authorizes the Ct. to impose the drastic sanction of default if defendant refuses to obey the Ct. Orders. Fed. Rules,37(b).

During the contempt proceedings appellant had to put w/Royan & McCabe continous abusive acts toward her in the presence of witnesses. She has been under a great mental strain due to the run around(2½ yrs. incurred many expenses, misleading, lying in open Ct. to each & every judge that heard the motions, by pretending to produce the records) threats,& oppressive conduct. Respondent Cooney was fully aware that they were lying, filed false statement) falsifying documents(Yoshpe reports) caught by judge Cooney supported by witnesses in the open Ct.(vol.1Ct.pp.277-228)

To support McCabe's lies, appellant took Royan's deposition Dec.11'72. Royan, did not only refused to bring the records requested through a subena, but refused to identify records presented to him (what records they produced). Appellant asked Royan, "why he did not bring the records"? "no reply"...McCabe's reply was "In any event, the records are not here.."Now what are you going to do about it"?(vol.1Ct.p.31)

Appellant filed a motion for an Order CCP § 1003 for applees, agent & their counsels bring the records,etc. in the presence of the Ct. to "IDENTIFY THE GENUINESS & COMPLETENESS OF THE RECORDS", was heard before Respondent Cooney, Jan. 12'73.

The complaint alleges against Bayshore were sufficient to state cause of action for fraud,perjury, violation of Rule 18,etc. Records in questions properly prepared by CPA for trial Ct. to understand why records are vitally needed.(vol.1Ct.pp.186-187). The amount requested that Bayshore & each of them be ordered to pay jointly & severaly to appellant the amount of $ 200,000, cost 7% from the date of each payment respectively. No opposition was filed. Appellant further stated, that if there is substantial evidence to support the findings as to any material concealment the judgment must be affirmed.(vol.1Ct.p.32) for complete details,pp. 30-35) (a) Royan under oath examing the records one at a time, fully stated that "Records were not complete",(b) after reading judge McBride's order, I asked Royan, if he complied w/the order, he said,"HE DID", then I asked him if he is an accountant, the answer was "YES",(c) I showed him a "BLUE SLIP OF PAPER", which he identified as a "BILLING INVOICE", I asked him if he produced the billing invoice, (order by the Ct.) his answer was "NO"

> When a person willfuly swears to a believe in the existence of fact which he knows does not exist, he is as guilty of perjury as if he had sworn directly to the existence of a fact which he knew did not exist. PEOPLE v AGNEW (1947) 77 CA2d 758,176 P2d 724
>
> See Fed.Crim.Proc. 18 § 1621
>
> UNITED STATES CRIMINAL CODE: § 125 17 USCA § 231, Federal regulations prescribing punishment for subornation of perjury was considered elsewhere in this article. See infra § 80. Sufficient indictment (Pen. Code § 966;

McCabe to support his client, lied & mislead the trial ct. (vol.1Ct.p.33)

> An Atty. of law & client who makes a false statement to the Ct. which they knows to be false, for the purpose of deceiving & defrauding the Ct. obstructing & hindering the administration of justice, is guilty of "CRIMINAL CONTEMPT" § 19 18 U.S.C.A. § 401....Any other rule would degrade the dignity of the Ct. & lower the confidence of the public in the judicial system & should be punished.(vol.1Ct.p.35) U.S. Const. art. III,§ 2; See Douglas v. First National Corp. 543 F.2d-894 (1976)

Motion denied by trial court (see vol.1Ct.p.34) oral argument.

> Under Rule 42 "CRIMINAL CONTEMPT" must be punished summarily. The order of contempt shall recite the facts & shall be signed by the judge & entered of record.(See vol.3 R.Ts.p.148

X. WILLFUL CONSPIRACY & ABUSE DISCRETION OF THE COURT:

The 10th & 11th counts of complaint appellant alleges; That appellees & each of them, counsels,(Wm.McCabe & Waranof) & all parties involved in this Action are charged of "willful conspiracy" to defraud & descriminate appellant's appeal,(cross-claim) counsels abuse of process conspired w/the Ct. Clerks,* & ** judges repeated grave injustice of judicial power by their willful persistent failure to perform their duties, as prescribed by the statute, (Fed. Rules, C.P.Rule 8(c)(d),9(b)12, 37(b), 55(b)(1), 28 U.S.C.A.) & in furtherance of a common scheme or design the unlawful purpose of the conspiracy & the knowledge of the conspiracy & its unlawful purpose, severely damaged appellant's health & her lawful business at the amount of $ 400,000(vol.1Ct.pp.216-237) which resulted in a miscarriage of justice, using the 2nd action to circumvent gross violations of the 1st action, which the U.S.C.A. judges are fully aware of the following illegal acts; (vol.1Ct.pp.231-pp.45-47)

> In conspiring two or more person to do any act w/intent to prevent the course of justice, or to effect a legal purpose w/a corrupt intent or improper means is punishable by law. Fed. Crim 18 § 241.

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* U.S.C.A. Ct. Clerk, Melfi refused to file motion to enter default(Rule 55(a)# 78-1568, to enable Wells Fargo to file a 2nd action. U.S.C.A. Atty. Schicklee, refused to submit,writ,motion to the Ct. misleading appellant to go back to the D.C.A. (vol.1Ct.pp. 212-213-p.252, # 79-7291). D.C.A. Ct.Clk.Porter,refused to transfer to the State Supreme Ct. Petition for Hearing CRC RULE 29(a), "QUESTION OF LAW", Recall for Remittitur, Request for Written of Findings of Fact & Conclusion of Law, etc.refused to be filed by State,S.Ct.Clerk,Bishel(vol.1Ct.p.46.p.233) S.Ct.Clerk refused to enter on the calendar theR.T.(Motion for Admission:for damages,expenses, & equity Relief based on Extrinsic fraud, heard May3'74, before Respondent Cooney, abandoned by Appelles & their counsels, (vol.1Ct.p.46) For complete refusal to do Ct.Clerks duty, see(vol. 1Ct.p.66) misconduct of McCabe & RespondentCooney's gross errors, prevented appellant from obtaining justice)

Writ, # 78-1568, was denied by judge Kennedy & Wallace contrary to the issue presented is extremly prejudicial & is a "QUESTION OF LAW", because trial court's gross errors & Bayshore's gross violations, willfuly violated & defaulted is firmly established, supported w/records which involved gross fraud w/11 counts. It is not the province of a Ct. of Appeals to challenge such a well establish rule. Appellant requeating the Ct. to compel D.C.A. to dismiss Bayshore's appeal (vol.1Ct.p.35) & to review the entire case (vol.1Ct.p.58) appealed by "BRESSLER", dismissed by D.C.A. (vol.3pp.2-3 # 35845) by "MISTATING THE FACTS"(vol.1Ct.pp.15-16) as presented, (undisputed by counsel, Meyers) is unlawful, and against the Const. by revoking the statute, firmly established.

U.S.C.A. Judges has authority to issue an appropriate writ of review on default judgment where Ct. has appellate jurisdiction over final judgment to be rendered in case and it is abuse its discretion to postpone review until judgment in case is reach & an appeal can be taken, 28 U.S.C.A. § 1651(a) (vol.1Ct.pp.56-58)

Certiorari is an extraordinary remedy, where D.C.A. exceedeed its jurisdiction or has taken action amounting to a usurpation of power, (for example: KERR v. U.S. Dist.Ct. for Northern Dist. of Cal. 1975, 511 F.2d Cert. granted 1988 421 U.S. 987, 44 L.Ed. 475 (vol.1Ct.p.56)

TRIAL COURT ABUSED ITS DISCRETION:

Respondent Cooney abused its discretion the following; (a) Refused to enter default w/sanction, before jury trial commenced, (b) set aside motion for admission, during jury trial, (c) was heard after jury trial w/out the presence of counsels, (d) instructed the Ct. clerk not to file motion to enter default, (e) refused to hear motion in opposition to strike cost (vol.1p.(281)fully accounted for, (vol.1Ct.p.354) etc. For complete records (see vol.1pp.351-352) Jury trial was a waste of time & money because the property rights & all material issues was not entered as evidence. (vol.Ct.p.310)

Respondent DRAPER,(DCA) denied appellant to have a C.R. presence during the hearing Nov.19'75, # 35845 (vol.3p.72) Judges, Ratigan,& Caldecot, (Div. Four) denied appellant's motion to dismiss,to show cause, to impose sanction & to award damages for Bayshore's frivolous appeal---all enied.(See vol.3pp.67-70)

To protect the 1st action, on May'78, I filed a motion (# 12-2370) for an order "To restrain Bayshore,& to Extend the lease under CCP §§ 527 Preliminary & Permanent Injunction CC §§ 3433 & General Damages CC §§ 3333 w/11 counts of complaint attached in the motion. Respondent Hall, abused it discretion denying appellant's motion, after oraly argued allegations stated in this appeal, Clks. conspiring w/counsels & Bayshore's evil motives, (un-healthy coincidences, looses electrical & air conditioning wires, car etc. in her place of business. undisputed by Waranof.(vol.1Ct.p.234) See letter addressed to appelles' evil motives (vol.3pp.261-264)

> The general purpose of such injunction is to preserve statuts quo until its final determine. MAROLDA V. LA PINER (1947) 81 GA2d 742, 185 P2d 40.

2ND "UNLAWFUL DETAINER ACTION"

1.*Petition # 79-7291,(vol.1pp.69-101) w/attached appendix was filed June 2'79, to restrain the lower Ct. from enteraining the 2nd action. To compel Respondent Rothenberg(Vol.1Ct.p.93) to "quash" the writ of execution, & to compel appellees,counsels to answer appelant's "RWQUEST FOR ADMISSION"(vol.1pp.121-141) of what took place for 8½ yrs. to end the litigation. etc.

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*Memorandum of Decision by Respondent Cooney, was filed Sept.27'73 confirming "FRAUD",against Bayshore, but several parts of his decision does not speak the truth to protect Bayshore's "malicious acts"(vol.3pp,111-113)

QUOTE: "Unlawful detainer action were filed against plaintiffs when they failed to pay electricity under amended mehtod". (contrary to the restraining order*) (vol.1pp.168-173)

Restraining Bayshore, agents & their counsels from engaging in or performing, directly or indirectly, & all of the following acts;(a)Serving any three day notices, filing, initiating or in any way proceeding in any unlawful detainer action against us all in regard to the non-payment by any of the plaintiffs of assessment for electricity over & above the monthly payment stipulated in the lease.

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* Writ remained unanswered. Facts of service was filed to the Ct. to give the Ct, jurisdiction to enter default against them.

It is abused discretion of judges Anderson & Skopkil to deny appellant's writ,# 80-7089 filed Feb. 15'80. Writ was filed,(vol. 2pp.5-34) to restrain DCA, Div.Four,(from acting in excess of their jurisdiction. Appellant received a dismissal of her appeal Jan.31'80,(after U.S.C.A. Ct. refused to file her appeal to this Ct.,Oct. 15'79, # 79-7291, costing me, $ 700.00.to fly to Washington,D.C.) from D.C.A. judge Caldecot,(afftached as appendix "E") as per Waranof's request, misleading the Ct.) & to compel the S. Ct. to "dismiss 1st & 2nd action", or to show cause (see vol.2Ct. pp.29-31, for complete details)

> Where the inferior Ct. had jurisdiction & was not exceeding the statutory powers the sole function of the writ is to require the Ct. to act where he has refused to do so. American Const. Co.v.Jacksonville T. & K.W.R.Co. 148 US 372 37 Led 486 13 S.Ct. 758;

•In appellant petition she stated that, on Apr.6'79, after appellant filed her Motions to dismiss appellees complaint,vacate judgments obtained though fraud & enter default judgment.(vol.pp.368-404) Respondent Cooney, filed his order by stating;

> "Good cause appearing therefor, it is ordered that the above entitled matter, and the same is, hereby dropped from the calendar.(vol.1p.119)
>
> IT IS HEREBY ORDERED that a new Memorandum that Civil Case is at Issue be filed in order to restor the matter to the civil active list.
>
> April 5,1979 ROBERT COONEY

After the hearing on April 17'79,(vol.1Ct.p.89) I received a "notice for trial"(vol.1p.120) for June 21'79, appellant filed a "REQUEST FOR ADMISSION"(rule 36) to support my three motions, denied by Respondent Rothenberg, after appellant filed her request for admission, to protect her rights.

The next day appellant received an order from Respondent Cooney "ORDER DROPPING CAUSE FROM CALENDAR"(Vol.1p.145)

DATED: April 15,1979 ROBERT COONEY

It is unusual for a judge not take his order too seriously Respondents, don't want the true facts admitted to end the litigation pending for almost 9 yrs.,which entitled appellant the relief sought, under the statute. -20-

Repeatition of "usurpation of power", the grave wrong which could be avoided, for further expense, inconvience,& wasting time of a busy Ct. could be said if, by review, now, by means of a writ of mandamus, prohibition, and/or Cert. statutes & their jurisdiction be given their natural meaning. "ALL WRITS ACT TITLE 28 U.S.C. § 1651(a) (vol.1Ct.p.56) Repeated denials of the writ is unduly discriminatory, denied appellant her right of due process of law;

> Appellate review is not a constitutional entitlement. It is purely statutory right, and to avail oneself of that right, one must satisfy the terms of the statute. Under the "All Writs Act, the essential condition of review is that there be a "final decision" in the case. This prerequisite of finality is founded on the long-standing policy of avoidance of piecemeal review; "Finality as a condition of review is an historic charcteristic of federal appellate procedure.
>
> Congress from the very beginning has, by forbidding piecemeal disposition on appeal of what for practical purposes is a single controversy, set itself against enfeebling judicial administation". Cobbledick v. United States 309 U.S. 323, 324-325, 60 S.Ct. 540, 541. 84 L.Ed. 783 (1940). (vol.1Ct.p.82)

because appellant's petition fully set forth the claim showing that she is entitled of the relief of the "ENTIRE CASE". Stating the facts sufficient to constitute a cause of action.(Rule 8 Fed. Civil Procedure)

> In Diogardi v. Durning 2 Cir. 1944, 139 F.2d 774, 775; This is said to be the general holding of the Cts. Moore's Fed. Prac. 1949 Supp. vol.2d p.1640; A general summary of case that affords fair notice seems to be all is required. (Securities & Exchange Comm. v. Timetrust, Inc., D.C.N.D. Cal. 1939 28 Supp.34;

At the threshold, we are met w/the appellant's contention that mandamus does not lie here since the appellant has asserted a claim of errors in the construction of a statute by the D.C.A., etc. (vol.1Ct.p.53-vol.3Ct.pp.27-28), repeatidly filed calling the attention of the U.S.C.A. judges. Mandamus is an extraordinary remedy. It is appropriately exercised where the D.C.A. has exceeded its jurisdiction, or has improperly failed to exercise jurisdiction, or has taken acting amounting to an "usurpation of power". Will v. U.S. 389 U.S. 90,95,96, 88 S.Ct. 269, 19 L.Ed.2d 305 (1967)

Roche v. Evaporated Milk Ass'n, 319 U.S. 21,26,63,S.Ct.938 87 L.Ed. 1185 (1943)

The 9th Cir. based it decisions on the district court's "usurpation of power" in Pan American World Airway, Inc. v. United States Dist. Court 523 F.2d 1073 (1975); McDonnell Douglas Corp. v. United States Dist. Court, 523 F.2d 1083 (1975). The court set it standard for granting mandamus in Hartley Pen Co. v Uunited States Dist. Court, etc. 287 F.2d 324, 329 (9th Cir. 1961)

> "In our view the remedy is available in an ordinary case within our jurisdiction if ordinary remedies are inadequate and there are present exceptional & extraordinary circumstances which require the issuance of an extraordinary writ to prevent a grave miscarriage of justice....."

Indeed there is no question that this case is exceptional and unusual, amounting to a judicial usurpation of power of the illegal repeatition grave injustice made by the Court Clerks, and the Court's itself fully set forth in this appeal and appellant's affidavit; Were a case where trial judge had arbitrarily and contumacioulsy "VOIDED" PARAGRAPH 17 of the tenant lease agreement,(material issue of the case) in the presence of the jury before jury tiral commenced, refused to submit, violation of RULE (vol.3p.119) 18 as evidence, refused to question her witnesses, refused to submit jury instruction, instead submitted Bayshore's "INTERROGATORIES" (object by us) contrary to the issue we are fighting for,(vol.1Ct.p.55). Instead of correcting Bayshore's violations, (penalizing them as per my request to the jury not objected by counsels) trial judge helped them to committ the same all over again; Affirmed by D.C.A. (vol.1Ct.p.257) is against the Constitution.

JUDICIAL POWER: must be exercised in conformance w/due process of law, U.S. Const. Amended XIV § 1; Cal. Const. art.I § 13, whenever it can be affirmatively established that the trial & appellate court, had denied a party due process, resulting in a "MISCARRIAGE OF JUSTICE" the judgment must be reversed. (vol.1Ct.p.93)